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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re K.S. et al, Persons Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

K.H.,

Defendant and Appellant.

E072044

(Super.Ct.No. RIJ1701026)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,  
Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and  
Prabhath Shettigar, Deputy County Counsel, for Plaintiff and Respondent.

Appellant K.H. (mother) appeals from the juvenile court's denial of her Welfare and Institutions Code<sup>1</sup> section 388 petition regarding her children, K.S. and D.S. (the children). She also claims the beneficial parental relationship exception applied. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

On December 26, 2017, the Riverside County Department of Public Social Services (DPSS) filed an amended section 300 petition on behalf of the children. K.S. was three years old at the time, and D.S. was 17 months old. The petition alleged that they came within the provisions of section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The petition alleged that mother neglected the health of D.S. when he ingested amphetamine while in her care. The petition also included the allegations that mother suffered from unresolved mental health issues and failed to obtain treatment, she abused controlled substances and supervised the children while under the influence, and she lived a transient lifestyle. The petition also included allegations regarding the children's father, D.S., Jr. (father).<sup>2</sup>

A social worker filed a detention report stating that mother and the children were staying in a motel room. The children were playing under the bed, when D.S. put something in his mouth, which mother said might have been a pill. D.S. started acting different and stopped breathing, so mother called 911 and he was taken to a hospital.

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<sup>1</sup> All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

<sup>2</sup> Father is not a party to this appeal. Therefore, this opinion will focus on mother.

D.S. tested positive for methamphetamines. When interviewed by the social worker, mother said she and the children lived with the maternal great aunt in Moreno Valley, and father was currently incarcerated. Mother said she was diagnosed with depression and anxiety disorders in July 2017. She was prescribed valium and another medication, but she recently ran out of both of them. She said she had been drinking “more than usual the past few months,” but she had been sober for the last three weeks. Mother said three weeks ago, she voluntarily took herself to a psychiatric facility because she needed to detoxify from alcohol.

The court held a detention hearing on December 27, 2017, and detained the children. They were placed in the home of the maternal great aunt.

#### *Jurisdiction/Disposition*

The social worker filed a jurisdiction/disposition report on January 24, 2018, recommending that the court sustain the petition, declare the children dependents of the court, and provide mother with reunification services. Mother reported that she did not have stable housing, and she and the children had been staying in motels or with random friends. The social worker was concerned about mother, since she had a prior child welfare history that included substantiated, as well as inconclusive, allegations of general neglect, and issues of domestic violence, positive drug test results, and evasive behavior during investigations.

The court held a hearing on January 29, 2018, and sustained the petition, declared the children dependents, and removed them from mother’s custody. The court ordered mother to participate in reunification services. Her case plan included the requirements

that she participate in counseling, participate in an evaluation for psychotropic medication, complete a domestic violence/anger management program, complete a parenting education class, participate in random drug testing, participate in a 12-step program, and undergo a substance abuse assessment and participate in a substance abuse program if recommended.

#### *Six-month Status Review*

The social worker filed a status review report on July 19, 2018, and recommended that mother's services be terminated. Mother was referred to MFI Recovery Center (MFI) for substance abuse treatment. She completed her intake on June 1, 2018; however, DPSS had yet to receive verification of enrollment. On May 29, 2018, mother submitted to a voluntary saliva test and tested positive for methamphetamines and amphetamine. She claimed she did not use and was referred for an on-demand test; however, she did not show. On June 1, 2018, mother tested positive for methamphetamines and THC. She admitted using marijuana, but denied using methamphetamines.

The social worker further reported that mother was visiting the children at least once a week, and the visits were going well. She was attentive to their needs and was appropriate with them.

The social worker also reported that the children were thriving in their placement. The caregivers were nurturing and loving, and they were meeting all the children's emotional, physical, medical, and educational needs. The caregivers were bonded with the children, and they were willing to establish permanency.

The social worker opined that it would be detrimental to return the children to mother's care at that time. Mother was not actively participating in her reunification services, and she had unresolved issues with substance abuse, mental health, and transient living. She was not maintaining her sobriety and was not medication compliant. It was unclear if she had adequate housing or provisions for the children.

A contested six-month review hearing was held on July 31, 2018. The court found that mother failed to participate regularly and make substantive progress in her case plan. Therefore, the court terminated her services and set a section 366.26 hearing.

#### *Section 366.26*

The social worker filed a section 366.26 report on November 16, 2018, and recommended that the section 366.26 hearing be continued for 120 days to allow a preliminary adoption assessment report to be prepared. The social worker reported that mother still had the same unresolved issues with substance abuse, mental health, and transient living. She recently started inpatient treatment and left the program after four days. The social worker further reported that, since the last hearing, mother had become very inconsistent with her visits. She was cancelling at the last minute, rescheduling, or just not showing up or calling. She missed her last three scheduled visits on September 16, September 23, and September 30, 2018.

As for the children, they were doing extremely well under the care of the prospective adoptive parents, who were their maternal great aunt and uncle. The children had lived with them since December 21, 2017, and there was a mutual bond. The prospective adoptive parents loved the children, and the children were attached to them.

The prospective adoptive parents were able to provide them with a stable home and were eager to adopt them and make them a permanent part of their family, if parental rights were terminated. They said that adoption was “an easy decision to make” because the children were family, and they loved them. They were committed to providing a loving and stable home for the children.

### *Section 388 Petition*

Mother filed a section 388 petition on January 9, 2019, requesting the court to grant six more months of reunification services and transition the children back into her custody.<sup>3</sup> As to changed circumstances, the petition alleged that mother completed a drug treatment program on her own initiative, maintained attendance in the 12-step program, completed a parenting course, maintained steady employment, obtained suitable housing, maintained contact with the children, submitted a recent negative drug test, and garnered community support. As to best interests, mother alleged that she had a “tremendous amount of support around her” from her employer and family, and she was now sober and had the tools to be a nurturing and caring parent. She also alleged that she shared a close bond with the children, and “with a grant of services, they [could] be together as a family.” Mother attached to the section 388 petition negative drug test results from July 2018, August 2018, and January 4, 2019; a letter from MFI stating she completed 24 sessions of outpatient treatment on September 10, 2018; a certificate of completion from a parenting class; a paystub showing she was hired at Diesel Fix on

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<sup>3</sup> Mother actually filed a separate section 388 petition for each child. Since the two petitions make the exact same allegations, we will just refer to them as one petition.

December 22, 2017, and made \$15 an hour; letters of recommendation; and a copy of her residential lease, which was signed on December 12, 2018. Mother also attached pictures of her residence and her children. The court ordered a hearing on the petition for January 10, 2019.

On January 10, 2019, the court held a combined hearing pursuant to sections 388 and 366.26. It first addressed the section 388 petition. Mother's counsel called several witnesses to testify, including the maternal grandfather, the prospective adoptive mother, and mother. After hearing testimony and argument from counsel, the court did not find a substantial change of circumstances or that it would be in the best interests of the children to change the current court order. It thus denied the petition, emphasizing that the children were in a stable and loving home and deserved permanency.

The court then proceeded to the section 366.26 portion of the hearing. Mother's counsel argued there was a substantial bond between mother and the children, such that it would be detrimental to terminate parental rights. He asked the court to consider legal guardianship as the permanent plan. After considering all the evidence submitted, including a favorable adoption assessment, the court found it likely that the children would be adopted and that none of the exceptions to termination of parental rights applied. It then terminated parental rights and ordered adoption as the permanent plan.

## ANALYSIS

### I. The Court Properly Denied Mother's Section 388 Petition

Mother argues that the juvenile court abused its discretion in denying her section 388 petition, since she showed change of circumstances and that it was in the children's best interests to provide her with six more months of reunification services. We conclude that the court properly denied the petition.

#### *A. The Court Did Not Abuse Its Discretion*

A juvenile court order may be changed, modified, or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 316-317 (*Stephanie M.*)). A section 388 petition is addressed to the sound discretion of the juvenile court, and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion. (*Id.* at p. 318.)

"After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*Id.* at p. 317.)

The juvenile court here did not abuse its discretion in denying mother's section 388 petition, as she failed to show changed circumstances or that a changed order would



be in the best interests of the children. As to changed circumstances, mother alleged that she completed a drug treatment program on her own initiative, maintained attendance in a 12-step program, completed a parenting course, maintained steady employment, obtained suitable housing, maintained contact with the children, submitted a recent negative drug test, and garnered community support. On appeal, she contends the evidence showed that she was clean, she completed a parenting program, she had stable housing and employment, and she no longer had to take prescription medication for her mental health issues.

At the time the court terminated mother's services, the main issues were that she was not actively participating in her reunification services, she had unresolved issues with substance abuse, mental health, and transient living, and it was unclear whether she had adequate housing or provisions for the children. The evidence mother submitted showed that she participated in outpatient treatment at MFI as of May 31, 2018, and, as of September 10, 2018, she completed 24 sessions. However, the record also shows that she tested positive for methamphetamines and THC on June 1, 2018, and admitted using marijuana.

Moreover, at the section 388 hearing, mother admitted she had a "hard relapse" on July 31, 2018. At that time, she went to a liquor store, "got 12 shots" and drank them within two hours. In other words, she relapsed while she was participating in outpatient treatment. "[R]elapses are all too common for a recovering drug user." (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 423 (*Clifton B.*)). One court has noted that "[i]t is the nature of addiction that one must be 'clean' for a much longer period than 120 days to show real

reform.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9.) Here, the section 388 hearing was held on January 10, 2019. Thus, five months was apparently not enough to reassure the court that the relapse on July 31, 2018, would be mother’s last. (See *Clifton B.*, p. 424 [court found that over six months was not enough to show real reform].) Mother contends that overcoming substance abuse is a lifelong process and asserts that she was only given six months. However, in doing so, she also states that she was “*on her way* to maintaining a sober and stable life.” (Italics added.) Thus, by her own admission, she was not yet sober and stable. At most, mother showed that her circumstances were changing, but had not changed.

Furthermore, mother was unable to demonstrate that a changed order was in the best interests of the children. “[A] primary consideration in determining the child’s best interests is the goal of assuring stability and continuity.” (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) As to best interests, she merely alleged that she had a “tremendous amount of support around her”; claimed she was sober and had the tools to be a nurturing parent; asserted that she shared a close bond with the children; and they could be together as a family. Mother clearly failed to show *how* it would be in the children’s best interests to reinstate her reunification services. Moreover, her circumstances failed to assure the court of any stability or continuity. (*Ibid.*) For example, mother submitted a copy of a lease agreement, which she signed on December 12, 2018—less than one month before the section 388 hearing. Thus, her housing situation had changed, but only very recently.

In addition, mother’s best interest contentions were essentially based on her alleged close bond with her children and her desire for them to be together as a family. If

those allegations were enough to satisfy the best interest prong, no parent seeking modification of a court order under section 388 would need to show the proposed modification actually benefited the dependent children. Moreover, “[a]fter the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child.” (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) The court here recognized this shift of focus in determining the ultimate question before it—the best interests of the children. (*Ibid.*)

In view of the circumstances, it is difficult to see how reinstating mother’s services, with the ultimate goal of returning the children to her custody, would be in their best interests. She failed to show how the best interests of her young children would be served by depriving them of a permanent, stable home in exchange for an uncertain future. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 49 (*Casey D.*) “[B]ecause the court had found [mother’s] circumstances were changing, rather than changed, it was entitled to conclude that granting the parents’ requests for further reunification services or long-term foster care was not in [the child’s] best interests given [her] strong and immediate need for stability.”].) We conclude that the court properly denied mother’s section 388 petition.

## II. The Beneficial Parental Relationship Exception Did Not Apply

Mother contends that the court erred in not applying the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(1). We disagree.

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*Casey D.*, *supra*, 70 Cal.App.4th at p. 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Celine R.* (2003) 31 Cal.4th 45, 53 (*Celine R.*)). If the court finds that a child may not be returned to his or her parents and is likely to be adopted, it must select adoption as the permanent plan, unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under one of the exceptions set forth in section 366.26, subdivision (c)(1)(B). One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(1). (See *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206.) This exception applies when the parents “have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(1).) The phrase “benefit from continuing the relationship” refers to a parent/child relationship that “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)). It is the parent’s burden to show that the beneficial parental relationship exception applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

In support of her position, mother contends that the children spent the first years of their lives with her, that she visited the children, and the visits went well. She asserts that the children greeted her with affection, she read to them, played music for them, and sang with them. When visits were over, they cried. She states that the evidence showed the children knew she was their mother and wanted to be with her, and she acted as a parent to them through her visits. The main evidence she points to is her own self-serving testimony and the testimonies of her father and the prospective adoptive mother.

Mother failed to meet her burden. The evidence showed that although she initially may have maintained regular visitation, things changed. In the section 366.26 report, the social worker reported that, since the previous hearing, mother's visits became very inconsistent. She cancelled at the last minute, rescheduled, or just failed to show up or call. She missed her last three scheduled visits on September 16, September 23, and September 30, 2018. The prospective adoptive mother testified that when mother missed her visits, it was due to transportation issues. Nonetheless, the evidence showed that mother failed to maintain regular visitation. (§ 366.26, subd. (c)(1)(B)(1).)

Furthermore, mother's interactions with the children do not even begin to demonstrate that her relationship with them promoted their well-being "to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) She has not proffered any evidence to support a finding that the children had a "substantial, positive emotional attachment [with her] such that the child[ren] would be greatly harmed" if the relationship was severed. (*Ibid.*) To the contrary, the prospective adoptive mother

testified that when mother missed visits, the children “[did not] really have a reaction.” When she told them mother could not make it, they would “just go on with their day.” She further testified that, on Christmas Day, the children knew mother was supposed to come to her house. After waiting hours for her to come, the prospective adoptive mother had to tell them she was not coming. She said that the children “just continued on with their day.”

We also note that the children were thriving in their prospective adoptive home. They were doing extremely well under the care of the prospective adoptive parents, who were their maternal great aunt and uncle. The prospective adoptive parents loved the children, and the children were attached to them. They were able to provide the children with a stable home and were eager to adopt them and make them a permanent part of their family, if parental rights were terminated. The prospective adoptive parents said that adoption was “an easy decision to make” because the children were family, and they loved them. They were committed to providing a loving and stable home for the children. The children had lived with them since December 21, 2017, and there was a mutual bond.

In view of the evidence, we conclude that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), did not apply here.

Mother additionally contends that the court should have ordered a permanent plan of legal guardianship with the prospective adoptive parents, since they would provide the stability the children needed, while allowing her to maintain her relationship with the children. Thus, she argues there was no need to terminate her parental rights and choose

adoption as the permanent plan. However, adoption is the permanent plan preferred by the Legislature. (*Celine R.*, *supra*, 31 Cal.4th at p. 53.) Section 366.26, subdivision (c)(1), provides that if the court determines that it is likely a child will be adopted, “the court *shall* terminate parental rights and order the child placed for adoption.” (Italics added.) The court here found it likely the children would be adopted. Thus, it properly ordered them placed for adoption. (§ 366.26, subd. (c)(1).)

#### DISPOSITION

The court’s orders are affirmed.

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McKINSTER  
Acting P. J.

We concur:

MILLER  
J.

RAPHAEL  
J.